

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

October 11, 2005 Session

WILLIAM J. REINHART, ET AL. v. ROBERT T. KNIGHT, ET AL.

**Appeal from the Circuit Court for Rutherford County
No. 41560 James L. Weatherford, Senior Judge**

No. M2004-02828-COA-R3-CV - Filed December 2, 2005

This appeal presents the issue of whether a defendant who is liable for statutory treble damages for procurement of breach of contract is entitled to an offset in the amount paid by a co-defendant in satisfaction of a judgment for breach of the contract. This question involves an inquiry into the nature of a statutory treble damage award under T.C.A. § 47-50-109. Does an award of statutory treble damages include an element of compensatory damages, thereby overlapping an award for compensatory damages based on breach of the contract, or is a treble damages award entirely punitive in nature? The trial court held that Defendants Bob Parks and John E. Harney, III, who paid \$556,429.44 plus post-judgment interest in satisfaction of a judgment for treble damages for procurement of breach of contract, were entitled to an offset in the amount paid by Defendants Robert and Glenda Knight in satisfaction of a judgment for breach of the contract. Plaintiffs appeal, arguing that they should be entitled to the entire amount of both judgments. We hold that the treble damage award is not entirely punitive, and because it includes an element of compensatory pecuniary damages incurred as a result of the breach of contract, there should be an offsetting credit in the amount paid in satisfaction of the judgment for breach of the contract. Accordingly, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed;
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

J. Stanley Rogers and Christina Henley Duncan, Manchester, Tennessee, for the Appellants, William J. Reinhart and Judith F. Reinhart.

Bradley A. MacLean and Stephen H. Price, Nashville, Tennessee, for the Appellees, Bob Parks and John E. Harney, III.

OPINION

I. Factual and Procedural Background

On April 26, 1999, Plaintiffs William J. Reinhart and Judith F. Reinhart brought this action for breach of a real estate contract against Robert T. Knight and Glenda Knight, and against Bob Parks and John E. Harney, III, for procurement of breach of that contract. On March 7, 2001, pursuant to a jury verdict, the trial court entered judgment against the Knights in the amount of \$185,476.48 for breach of contract, and judgment against Mr. Parks and Mr. Harney in the amount of \$556,476.44 (treble the amount of the Knight judgment), for procurement of breach of the contract.

The trial court remitted the judgment against the Knights to zero, and all parties appealed. This court reinstated the judgment against the Knights and affirmed the judgment against Parks and Harney. *Reinhart v. Knight*, No. M2001-02195-R3-CV, 2003 WL 22964302, 2003 Tenn.App. LEXIS 852 (Tenn. Ct. App. filed Dec. 4, 2003), *app'l perm. denied May 10, 2004* (“*Reinhart I*”).

After the judgments became final, the Reinharts and Mr. Parks and Mr. Harney filed a “joint motion for clarification of judgment” with the trial court. The joint motion alleged as follows:

The treble damages award, plus post-judgment interest, totaled \$738,907.79, as of May 28, 2004. Parks and Harney tendered two-thirds of that amount or \$492,605.20 to Plaintiff’s counsel on May 28. The remaining one-third balance was tendered to Plaintiff’s counsel as follows: Parks and Harney paid \$56,302.59, plus additional interest, on June 15, 2004; and the Knights paid the balance of \$190,000, plus additional interest, in multiple installments on or before June 30, 2004.

Parks and Harney argued that they were “entitled to a credit of \$190,000 against the treble damages judgment, which has now been fully satisfied.” The trial court agreed and allowed Parks and Harney a setoff against the amount paid by the Knights in satisfaction of the breach of contract judgment. The Knights filed no motions after our decision in *Reinhart I*, and have not filed a brief on this appeal.

II. Issue Presented

The Reinharts appeal, raising the issue of whether the trial court erred in allowing Parks and Harney a credit in the amount paid by the Knights, or whether they are entitled to the full amount of both the judgment for breach of contract and the judgment for statutory treble damages for procurement of breach of the same contract.

III. Standard of Review

Our review is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court's factual determinations that we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law, however, are accorded no such presumption. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993). Because the issue on this appeal is purely one of law, our review of the trial court's judgment is *de novo*, with no presumption of correctness. *Id.*

IV. Analysis

The Reinharts argue on appeal that the trial court erred in allowing Parks and Harney the offsetting credit in the amount paid by the Knights to satisfy the judgment against them for breach of contract. The Reinharts assert that they are entitled to the full amount of both judgments against Parks and Harney and the Knights, because, they argue, the treble statutory damage award for procurement of breach of contract is purely punitive, not compensatory, and therefore not duplicative of the compensatory damage award against the Knights for breach of the contract. Parks and Harney argue that allowing the Reinharts to recover both the full amount of compensatory damages from the Knights for breach of contract *and* the statutory treble damages for procurement of the breach would amount to an impermissible double recovery for the same injury, and further would result in the Reinharts receiving, in effect, quadruple damages.

It is axiomatic that a plaintiff may not recover double redress for a single wrong. *See Miller v. United Automax*, 166 S.W.3d 692, 697 (Tenn. 2005); *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 906 (Tenn. 1999); *Shahrdar v. Global Housing, Inc.*, 983 S.W.2d 230, 238 (Tenn. Ct. App. 1998)(“Whether the theory of recovery is breach of contract, intentional misrepresentation, or promissory fraud, if the damages claimed under each theory overlap, the Plaintiff is only entitled to one recovery.”).

The statute under which Parks and Harney were held liable, T.C.A. § 47-50-109, provides as follows:

It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same

shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

In addition to the action created by this statute, Tennessee recognizes a common law action for inducement to breach a contract. *Givens v. Mullikin*, 75 S.W.3d 383, 405 (Tenn. 2002). The elements for both forms of the action “are identical, except that a plaintiff asserting a common law action may recover punitive damages, instead of the treble damages mandated by the statute.” *Id.* Our courts have often noted that “the statute is declaratory of the common law except as to the amount of damages that may be recovered against a wrongdoer.” *Emmco Ins. Co. v. Beacon Mut. Indemnity Co.*, 322 S.W.2d 226, 231 (Tenn. 1959); *Polk & Sullivan, Inc. v. United Cities Gas Co.*, 783 S.W.2d 538, 542 (Tenn. 1989); *Buddy Lee Attractions, Inc. v. William Morris Agency, Inc.*, 13 S.W.3d 343, 353-54 (Tenn. Ct. App. 1999). In this case, Plaintiffs elected to proceed under the statutory action.

In light of the rule against double recovery for a single injury, the issue presented requires us to examine the nature of a treble damage award mandated by T.C.A. § 47-50-109. Is a judgment awarding treble damages for procurement of breach of contract entirely punitive in nature, or does the award include an element of compensatory pecuniary damages incurred as a result of the breach of contract? Our review of pertinent precedential authority persuades us that compensatory damages for breach of contract are included in a treble damage award for procurement of that breach.

In the case of *Dorsett Carpet Mills, Inc. v. Whitt Tile & Marble Dist. Co.*, 734 S.W.2d 322 (Tenn. 1987), the Supreme Court considered at length the appropriate measure of damages for the tort of procurement of breach of contract. The *Dorsett* Court stated as follows in relevant part:

The procurement of a breach of contract was a tort at common law and the legislature's enactment of T.C.A. § 47-50-109 merely codified that cause of action. *See Emmco Ins. Co. v. Beacon Mutual Indem. Co.*, 204 Tenn. 540, 322 S.W.2d 226 (1959). The statute does not address the basic measure of damages for the tort, but mandates the trebling of "the amount of damages resulting from or incident to the breach of the contract."

* * *

[T]he basic principle that the damages awarded to the plaintiff must be based on the direct and proximate result of the wrongful acts of the person procuring the breach of contract, remains viable.

Where the injury involved is interference with a business relationship, the plaintiff's loss of profits that result from the wrongful act are a proper item to be included in the measure of damages. . . There may

be other losses suffered by plaintiffs directly and proximately resulting from the wrongful interference that should be included within the measure of damages and for that reason, it is neither possible nor appropriate to articulate an inflexible measure of damages for interference with business relationships in general or for the more limited factual situation involved in the instant case. The measure of damages for this tort in Restatement (Second) of Torts § 774A is as follows:

- (1) One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for
 - (a) the pecuniary loss of the benefits of the contract or the prospective relation;
 - (b) consequential losses for which the interference is a legal cause; and
 - (c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.
- (2) *In an action for interference with a contract by inducing or causing a third person to break the contract with the other, the fact that the third person is liable for the breach does not affect the amount of damages awardable against the actor; but any damages in fact paid by the third person will reduce the damages actually recoverable on the judgment.*

Dorsett, 734 S.W.2d at 324-25 (internal citations omitted; emphasis added). Several Tennessee cases have subsequently quoted the *Dorsett* Court's citation with approval of §774A of the Restatement (2d) of Torts. *B & L Corp. v. Thomas and Thorngren, Inc.*, 162 S.W.3d 189, 222 (Tenn. Ct. App. 2004); *Systems Maintenance, Inc. v. Warren*, 1989 WL 3103 at *2-3, 1989 Tenn. App. LEXIS 23 (Tenn. Ct. App. E.S., filed Jan. 20, 1999).

The Reinharts recognize the applicability of §774A in this case, but they argue, with some persuasiveness, that the language of subsection (2), italicized above, begs the question at issue when considered in light of comment *a* to §774A, which states that “[t]his Section states only the rules applicable to the recovery of compensatory damages. Since the tort is an intentional one, punitive damages are recovered in these actions under appropriate circumstances.”

Although this argument is not without merit, comment *e* to this section directly addresses our issue in the present case, stating as follows:

The fact that the plaintiff may have a cause of action against the person who has broken his contract does not prevent recovery against the defendant who has induced or otherwise caused the breach, or reduce the damages recoverable from him. The defendant and the

contract breaker are both wrongdoers (compare § 875), and each is liable for the entire loss that he has caused. Even a judgment obtained for breach of the contract if it is not satisfied does not bar or reduce recovery from the one who has caused the breach. But since *the damages recoverable for breach of the contract are common to the actions against both, any payments made by the one who breaks the contract or partial satisfaction of the judgment against him must be credited in favor of the defendant who has caused the breach.*

Conversely, an action or judgment against the one who causes the breach without satisfaction will not bar or reduce recovery from the one who breaks the contract; but to the extent that there is duplication of the damages any payments made by the tortfeasor must be credited in favor of one who has broken the contract.

Restatement (2d) of Torts §774A, comment *e* (emphasis added).

Further, the court in *TSC Industries, Inc. v. Tomlin*, 743 S.W.2d 169 (Tenn. Ct. App. 1987), in a procurement of breach of contract case under T.C.A. § 47-50-109, stated the following:

Although one who induces a breach of contract is also liable for consequential losses, and emotional distress or harm to reputation, the damages recoverable for the pecuniary loss of the contract are common to both the action for breach and the action for inducement. Therefore, since where there is only one injury the law permits only one recovery, any payments made by the one who breaches the contract must be credited in favor of the one who induced the breach.

TSC Industries, 743 S.W.2d at 172. This principle has been stated as the law in Tennessee by this court in at least three other cases. *Farley v. Clayton*, 928 S.W.2d 931, 934 (Tenn. Ct. App. 1996)(“any payments made by the one who breached the contract must be credited to the one who induced the breach.”); *Testerman v. Tragresser*, 789 S.W.2d 553, 555 (Tenn. Ct. App. 1989)(“the damages recoverable for the pecuniary loss of the contract are common to both the action for breach and the action for inducement to breach.”); *Packaging Consultants, Inc. v. Garvey*, 1989 WL 155365 at *4, 1989 Tenn. App. LEXIS 837 (Tenn. Ct. App. W.S., filed Dec. 20, 1989).

Based on the precedent established by the above-cited cases, we hold that the treble damages award made pursuant to a statutory cause of action for procurement of breach of contract includes an element of pecuniary compensatory damages for the breach. Consequently, to avoid a double recovery for a single injury, to the extent a payment made by a defendant for pecuniary loss due to contract breach overlaps a judgment for procurement of the breach, the procuring defendant is entitled to an offsetting credit in the amount paid by the breaching defendant. In addition to the

above-cited authority, our research indicates that other jurisdictions are generally in accord with this holding.¹

In their brief, Parks and Harney strenuously argue that a cause of action for breach of contract is separate and distinct from an action for procurement or inducement of breach of contract, and that the latter sounds in tort while the former sounds in contract. While this is undoubtedly true, it does not necessarily follow that damages recoverable in each action may not overlap in certain respects.

Parks and Harney also rely on several Tennessee cases that recognize and hold that statutory multiple damages are punitive in nature. In *Concrete Spaces, Inc. v. Sender*, the Court stated as follows on this point:

Almost every jurisdiction addressing this question has concluded that recovery of both multiple statutory damages and punitive damages constitutes an impermissible double recovery because the two forms of enhanced damages serve the same functions. The purpose of punitive damages is not to compensate the plaintiff but to punish the wrongdoer and to deter others from committing similar wrongs in the future. *See Coffey v. Fayette Tubular Prod.*, 929 S.W.2d 326, 328 (Tenn.1996); *Hodges*, 833 S.W.2d at 900. Several Tennessee statutory schemes achieve the same objectives of punishment and deterrence through multiple damage provisions, which allow for compensatory damages to be trebled if the defendant's conduct rises to a specified level of culpability. Because multiple damages are punitive in nature and not intended to compensate for the plaintiff's injury, *see Smith Corona Corp. v. Pelikan, Inc.*, 784 F.Supp. 452, 483 (M.D.Tenn.1992); *Lien v. Couch*, 993 S.W.2d 53, 58 (Tenn.App.1998), a plaintiff cannot recover both punitive damages and multiple damages in the same cause of action, even if they are each available, because receipt of both forms of enhanced damages violates the principle against double recovery. *See Edwards v. Travelers Ins. of Hartford, Conn.*, 563 F.2d 105, 119-120 (6th Cir.1977); *Lorentz*, 834 S.W.2d at 320 (Tenn.App.1992).

Concrete Spaces, 2 S.W.3d at 906-07 (footnotes omitted); *see also Lien v. Couch*, 993 S.W.2d 53, 58 (Tenn. Ct. App. 1998)(stating treble damages under Tennessee Consumer Protection Act “are intended to be punitive rather than compensatory”); *Buddy Lee Attractions, Inc. v. William Morris*

¹*See Tennessee Imports, Inc. v. Fillippi*, 745 F.Supp. 1314, 1330-31 (M.D. Tenn. 1991); *Fraidin v. Weitzman*, 611 A.2d 1046, 1062-63 (Md. Ct. App. 1992); *Collins Music Co., Inc. v. Smith*, 503 S.E.2d 481,482 (S.C. Ct. App. 1998); *Ross v. Holton*, 640 S.W.2d 166, 173 (Mo. Ct. App. 1982); *Reliable Tire Distributors, Inc. v. Kelly Springfield Tire Co.*, 607 F.Supp. 361, 373 (D.C. Pa. 1985); *Charles River Const. Co., Inc. v. Kirksey*, 480 N.E.2d 315, 322-23 (Mass. Ct. App. 1985).

Agency, Inc., 13 S.W.3d 343, 355 (Tenn. Ct. App. 1999)(noting “the penal nature” of T.C.A. § 47-50-109).

We agree with these cases in their holdings that a legislative act allowing for, or mandating, the trebling of damages against a tortfeasor is an act punitive in nature. But we do not think these holdings can be stretched to an interpretation that an award of damages made pursuant to the statute is *entirely* punitive, with no element of damages in compensation for injuries sustained as a result of the underlying act, *i.e.*, the breach of contract.

As the cases discussed above indicate, the compensatory damages recoverable pursuant to a procurement of breach action are broader than those recoverable under a breach of contract action. Specifically, a plaintiff may recover at least two additional classes or categories of compensatory damages in a procurement action: (1) consequential losses for which the interference is a legal cause; and (2) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference. *Dorsett*, 734 S.W.2d at 325; Restatement (2d) of Torts, §774A. Further, as the Supreme Court stated in *Dorsett*, “[t]here may be other losses suffered by plaintiffs directly and proximately resulting from the wrongful interference that should be included within the measure of damages and for that reason, it is neither possible nor appropriate to articulate an inflexible measure of damages for interference with business relationships in general[.]” *Dorsett*, 734 S.W.2d at 324.

Consequently, a defendant who is held liable for the above classes of damages for procurement of breach of contract is not entitled to an offsetting credit from the breaching defendant for the amount of these damages, because they are not duplicative. In the present case, however, the record before us does not indicate that the Reinharts sought or were awarded any damages other than their pecuniary losses for breach of the contract. The jury was only asked to find “the total amount of damages arising from this breach of contract.” In future cases of this nature, a special jury verdict form should be used, breaking down and itemizing the classes of compensatory damages, in order to clarify and avoid confusion.

V. Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed and the case remanded for collection of costs below. Costs on appeal are assessed against the Appellants, William J. and Judith Reinhart.

SHARON G. LEE, JUDGE